

**Minutes of a Special Session of the Common Council of the Town of Clarkdale
Held on Tuesday, September 25, 2018 at 3:00 P.M.**

A Special Meeting of the Common Council of the Town of Clarkdale was held on Tuesday, September 25, 2018, at 3:00 P.M. in the Clark Memorial Clubhouse, Men's Lounge, 19 N. Ninth Street, Clarkdale, Arizona.

CALL TO ORDER – Meeting was called to order at 3:00 P.M. by Mayor Von Gausig.

Town Council:

Mayor Doug Von Gausig
Vice Mayor Richard Dehnert
Councilmember Scott Buckley

Councilmember Bill Regner
Councilmember Ben Kramer

Town Staff:

Acting Town Manager and Community Development/Economic Director Jodie Filardo
Administrative Services Director Kathy Bainbridge
Utilities/Public Works Director Maher Hazine
Finance Manager Kathy Cwiok
Building Inspector Paul Grasso
Planning Manager Beth Escobar
Sergeant Troy Smith
Community Services Manager Joni Westcott
Community Services Technician Allyn Backus
Town Attorney Rob Pecharich
Town Attorney Stephen Polk
Town Clerk Mary Ellen Dunn

PUBLIC COMMENT – The Town Council invites the public to provide comments at this time. Members of the Council may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to A.R.S. §38-431.01(G), action taken as a result of public comment will be limited to directing staff to study the matter, responding to any criticism or scheduling the matter for further consideration and decision at a later date. Persons interested in making a comment on a specific agenda item are asked to complete a brief form and submit it to the Town Clerk during the meeting. Each speaker is asked to limit their comments to five minutes.

There was no public comment.

CONSENT AGENDA - The consent agenda portion of the agenda is a means of expediting routine matters that must be acted on by the Council. All items are approved with one motion. Any items may be removed for discussion at the request of any Council Member.

- A. **Reports** - Approval of written Reports from Town Departments and Other Agencies
Building Permit Report – July, August 2018
Police Department Report – June, July, August 2018

Special Event Liquor Licenses Approved: July 27, 2018 Downtown Block Party;
October 6, 2018 Clarktoberfest 2018
CAT/LYNX Transit Report – July, August 2018
Verde Valley Humane Society – July, 2018

Action: Accept Consent Agenda item A as presented.

Motion: Councilmember Regner

Second: Councilmember Buckley

Vote:

Voting Member	Aye/Nay
Council Member Scott Buckley	Aye
Vice Mayor Richard Dehnert	Aye
Councilmember Kramer	Aye
Council Member Bill Regner	Aye
Mayor Doug Von Gausig	Aye

NEW BUSINESS

ACCEPTANCE OF BEN KRAMER'S RESIGNATION FROM THE CLARKDALE TOWN COUNCIL; DECLARATION OF VACANT SEAT ON THE COUNCIL - Discussion and possible action to accept the resignation of Ben Kramer from the Clarkdale Town Council, effective September 25, 2018, and the declaration of a vacant seat on the Council from September 25, 2018 – November 13, 2018.

Clarkdale Town Council Member Ben Kramer previously notified the Clarkdale Town Clerk and the Clarkdale Town Council that he does not intend to take the Oath of Office for the term he was elected to in November, 2018. On September 19 2018, he additionally notified the Town Council of his intent to resign from his current term of office effective September 25, 2018.

Mr. Kramer's resignation effective September 25, 2018 creates a vacancy for his current term of office for the period of time between September 25, 2018 and November 13, 2018. An additional vacancy on the Council (for the same position) will be created if Mr. Kramer does indeed decline to take the Oath of Office at the November 13, 2018 Regular Council meeting. That vacancy will be for a 2-year term that begins November 13, 2018 and ends in November, 2020.

This agenda item pertains only to Mr. Kramer's resignation from his current term of office, effective September 25, 2018 and through the expiration of the current term on November 13, 2018.

Mayor Von Gausig opened the discussion to public comment. The following person spoke during public comment:

Dr. Phil Doerksen, Clarkdale resident – Spoke about new vacancy created by the resignation of Councilmember Kramer and the Council's selection of a new Town Manager.

Mayor closed public comment. The Mayor and Councilmember Regner made statements of appreciation for Kramer's service.

Action: Accept Ben Kramer's resignation from his current term on the Town Council, and declare a vacant seat on the Town Council for the period from September 25, 2018 through November 13, 2018.

Motion: Vice Mayor Dehnert

Second: Councilmember Regner

Vote:

Voting Member	Aye/Nay
Council Member Scott Buckley	Aye
Vice Mayor Richard Dehnert	Aye
Councilmember Kramer	Aye
Council Member Bill Regner	Aye
Mayor Doug Von Gausig	Aye

Mr. Kramer left the Council meeting at 3:05 p.m.

APPOINTMENT PROCESS FOR VACANT COUNCIL MEMBER POSITION - Discussion and consideration regarding a process for filling the vacant seat on the Clarkdale Town Council, with a term of office from September 25, 2018 through November 13, 2018.

Mr. Kramer's resignation effective September 25, 2018 creates a vacancy for his current term of office for the period of time between September 25, 2018 and November 13, 2018. An additional vacancy on the Council (for the same position) will be created if Mr. Kramer does indeed decline to take the Oath of Office at the November 13, 2018 Regular Council meeting (which is his stated intent). That vacancy will be for a 2-year term that begins November 13, 2018 and ends in November, 2020.

While this agenda item only pertains to the appointment process for the term of office from September 25, 2018 through November 13, 2018, the staff is including information in this staff report about both vacancies and appointments for the Council and the public's benefit. Because there are legally two separate vacancies that will have to be considered, the Council will be required to take separate actions for each of those vacancies.

The process that the Council uses for appointments to vacant seats is strictly a matter of Council preference. Neither the Clarkdale Town Code nor the State statutes outlines any particular process. The main decision making points that past Councils have focused on when considering appointment processes include:

1) Application process:

- a. In addition to the state mandated forms that the Town Clerk's office will provide (such as verification that applicants are eligible to hold office) Councils have asked for:

- i. Letter of Application
 - ii. Resume
 - iii. Answers to predetermined written questions (the questions asked during the 2017 appointment process are listed below).
- 2) Interview process: In the past 20 years, Clarkdale Councils have most prevalently used interviews in a public meeting. The one exception to that was when one of our Councils decided to have each Council Member individually call each applicant (without a public interview process).
 - a. Interview questions have typically focused on the predetermined questions that applicants were given in advance, with Council Members having the discretion to solicit further input from the candidates on each question.
- 3) The timeline for the process.
 - a. Set an application deadline
 - b. Set dates for interviews (if applicable).
 - c. Set date for appointment to be made.
 - d. Set date for appointee to take office (some Councils have the person take office on the date they are appointed, and some have them take office at the next meeting.)

As noted above, prior Town Councils have typically asked applicants to submit written answers to a list of questions. Most recently, Councils have used the questions from the Board and Commission application. There have been Councils who have developed their own specific set of questions. Listed below are the questions that were used for the last council appointment process.

- 1) State the reason(s) that you seek a seat on the Clarkdale Town Council. What skills and/or background do you possess that make you qualified to fill this vacancy and how would you expect to impact the residents of our town if appointed to this position?
- 2) Please list previous volunteer or community service projects or activities that you have participated in (does not have to be in Clarkdale) and recount your past involvement with municipal government.
- 3) Discuss your understanding of the Council's role as a policy setting body, the staff role as an administrative body, and how the two work together.
- 4) What do you see as the importance of working with other municipalities and other government agencies?
- 5) How do you perceive the balance in our community regarding the environment, quality of life and our increasing development?
- 6) What do you consider to be the major issues facing the Town of Clarkdale in the next 5 years, and what do you feel the Town's priorities should be?
- 7) Is there any other information you would like to provide which might help the Town Council make its decision on the appointee to this vacant Council position?

It might also be advisable, if the Council desires to consider applicants who would be willing to be appointed for both the current vacant term, and the term that begins November 13, 2018, to add an eighth question:

- 8) If you were appointed to fill the vacant term from September 25, 2018 and November 13, 2018, would you also be willing to be appointed for an additional two-year term beginning November 13, 2018?

Given the date of Mr. Kramer's current resignation notice, and his previous notice that he will decline to take the Oath of Office for the term that begins November 13, 2018 and the proximity of those notices to the 2018 General Election, staff sought legal advice from Clarkdale Town Attorney Robert S. Pecharich relating to the vacancy on the Council. The attorney's legal opinion is attached in full. A summary relating to the vacancy on the Council is as follows:

Question: If a candidate elected to the Town Council declines to be seated and declines to take the Oath of Office, is there a vacancy on the Council, and how is that vacancy filled?

Attorney's Response: Yes. A vacancy occurs under this scenario.

The vacancy is filled by appointment by the Town Council.

In the case of *Tellez v. The Superior Court of the State of Arizona in and for the County of Pima*, 104 Ariz. 169,450 P.2d 106 (1969), the Arizona Supreme Court considered a situation where the primary election for County Treasurer contained four names, including the incumbent, and the incumbent died shortly prior to the election, but at the election he received the highest number of votes. The Court held that the candidate receiving the next highest number of votes did not receive the required "highest number of votes" within the constitutional provision that a person receiving the highest number of legal votes in an election shall be declared elected. The Supreme Court held that votes cast for a deceased, disqualified or ineligible person are not to be treated as void or thrown away, but must be counted, and those votes determine the result of the election in regard to other candidates where such deceased or disqualified person received the highest number of votes. The Court held that the result of the application of this rule is that the person receiving the next highest number of votes is not elected.

The Court reasoned that an election is the deliberate choice of a majority or plurality of the electoral body. This is evidenced by the votes of the electors. But if the majority or plurality of those voting, by mistake of law or fact, happen to cast their votes upon a candidate that is ineligible, it by no means follows that the candidate with the next highest votes cast should receive that office.

The Court held that the votes cast for an eligible candidate are merely ineffectual for the purpose of electing that candidate, and those votes are not given to the candidate with the next highest number of votes.

Arizona Revised Statutes § 9-235 provides that the Council shall fill a vacancy that may occur by appointment until the next regularly scheduled council election if the vacancy occurs more than 30 days before the nomination petition deadline, otherwise the appointment is for the unexpired term.

Conclusions:

The votes cast for a candidate who receives a majority of the votes and is elected, but who declines to accept the office and who does not take the oath of office, are not counted in favor of the candidate with the next highest number of votes.

If a candidate elected to the Town Council declines to accept the office and does not take the oath of office, a vacancy on the Town Council occurs. This vacancy is filled by the Town Council, the same as in the case of any vacancy occurring for any reason.

In accordance with our Town Attorney's legal advice and with §A.R.S. 9-235, the Town Council shall fill both vacant terms by appointment.

First, the Council would need to appoint someone to fill the remainder of Mr. Kramer's unexpired term (September 25, 2018 through November 13, 2018). The process to determine who will be appointed is the subject of tonight's agenda item.

Second, the Council will need to make an additional appointment at the November 13, 2018 Regular Council meeting for the two-year term (from Nov. 2018 – Nov. 2020). The second two years of the term that begins November 13, 2018 shall be filled through an election process, where a 2-year Council term will be listed on the 2020 election ballot.

With regard to the timeline for the appointment process, please note, A.R.S. §38-232 states:

38-232. Time of oath

When a different time is not prescribed, the oath of office shall be taken and subscribed as follows:

- 1. If appointed, at or before commencement of the term of office.*
- 2. If elected, at any time after receiving the officer's certificate of election, and at or before commencement of the term of office.*

Pertinent to the appointment to the vacant seat that begins November 13th, Clarkdale Town Code §2-1-3 states that "The Council shall assume the duties of office at the regularly scheduled Council meeting next following the date of the general election..."

Staff has structured our proposed timeline with the presumption that Council Member Kramer's resignation from his current term will be accepted on September 25th. Thereafter, we presume he will indeed decline to take the Oath of Office for his new term on November 13th, with the intent

on having a new Council Member seated at that meeting. We have conferred with the Town Attorney, and he agrees that the timeline outlined below would be compliant with State statutes and the Clarkdale Town Code.

Action	Date
Council Accepts Council Member Kramer's Resignation from Current Term of Office and Adopts a Process for Filling the Vacant Seat	September 25, 2018
Formal Solicitation of Applicants Can Begin	September 26, 2018
Application Deadline	October 10, 2018
Interview Date	October 16, 2018
Council Makes Appointment to Vacant Seat for the remainder of existing term	October 23, 2018
2018 General Election	November 6, 2018
Strategic Planning (9am – 5pm)	November 8, 2018
Regular 6:00 p.m. Council Meeting – Appoint New Council Member to 2-year term	November 13, 2018

Thus, under the presumption that Council Member Kramer will decline to take the Oath of Office at the beginning of the November 13th meeting (which is the first regularly scheduled Council meeting following the General Election), the Council would take the following steps at the November 13th meeting:

- Administer the Oath of Office to Council Member Regner
- Acknowledge that Council Member Kramer has declined to take the Oath of Office, and declare a vacancy on the Council
- Appoint a duly qualified Clarkdale resident to serve a 2-year term on the Council
- Administer the Oath of Office to the newly appointed Council Member
- The newly appointed Council Member would then be seated and participate in the remainder of the November 13th meeting

While the Council is not obligated to appoint the same person to fill the current unexpired term and the 2-year term that begins November 13, 2018, the staff has structured our recommended timeline with the presumption that the same person will be appointed to both positions. Doing so would allow the newly appointed member of the Council to fully participate in the previously scheduled November 8, 2018 Annual Strategic Planning meeting. It would also give the staff adequate time to brief the incoming Council Member on issues, rules and responsibilities prior to their first Council meeting.

At this time, in order to move forward regarding a process for filling the vacant seat on the Clarkdale Town Council, with a term of office from September 25, 2018 through November 13, 2018, staff needs direction from the Council on the process, timeline, and the interview questions to be used (if any).

Town Clerk Mary Ellen Dunn presented information on this agenda item to Council.

Vice Mayor Dehnert asked if the current agenda item process included making an immediate appointment to the vacant council seat. Discussion followed with assistance by Town Attorney Pecharich and Mayor Von Gausig who noted that the agenda item only allowed for adopting a process. No appointment could be made today. Pecharich noted that the only vacancy that was available as of today's date would be the vacancy created a few moments ago when Councilmember Kramer resigned from his current term: September 25 – November 13, 2018.

There is no vacancy on the Council for the term Mr. Kramer has been elected to which begins November 13th because on November 13th the Oath of Office is triggered and then we will find out if he will accept or decline the Oath. If declined, a vacancy will occur.

Town Attorney Pecharich and Mayor Von Gausig clarified Open Meeting Law questions for Council.

Further discussion followed regarding the process possibilities. Mayor Von Gausig stated that often people who did not run for office might still wish to apply for the position and Council should have the opportunity to vet those persons. Vice Mayor Dehnert restated his opinion that the next person in line after the primary election should be appointed, not to set a precedent, but solely based on the efforts of that individual. Mayor Von Gausig opined that taking the next highest vote getter was making an assumption that the votes garnered by Councilmember Kramer would have gone to that individual and cautioned the Council against making that assumption. Councilmember Regner spoke in favor of the process outlined by staff due to the many qualified applicants that we have serving on our Boards and Commissions. Councilmember Buckley agreed and suggested that applicants that were interviewed when Kramer was appointed might be considered for this appointment. Regner agreed with the Mayor and stated we have a representative democracy and Council was elected to make these kinds of decisions they believe are best for the town.

Action: Adopt the timeline as stated in the packet and suggested in concert with the staff, that we adopt all eight questions in the packet, the eighth question being "If you were appointed to fill the vacant term from September 25th to November 13th, would you also be willing to be appointed for an additional two year term beginning November 13, 2018 and accepting the resignation and formal solicitation of applicants would begin tomorrow. Application deadline would be October 10th, interview date for applicants would be October 16th at a special meeting of the Clarkdale Council. Council would make an appointment to the vacant seat on October 23rd, November 6th we would have the General Election, November 8th is Strategic Planning, and then at our regular town council meeting we would appoint a new councilmember to that 2 year term. Clarification that we are stating a process that would begin tonight and run through November 13th.

Motion: Councilmember Regner**Second: Councilmember Buckley**

Discussion followed and Councilmember Buckley requested that the eighth question suggested in the staff report be omitted from the application. Prior Motion and Second were withdrawn.

Action: Motion amended to delete question #8.**Motion: Councilmember Regner****Second: Councilmember Buckley****Vote:**

Voting Member	Aye/Nay
Council Member Scott Buckley	Aye
Vice Mayor Richard Dehnert	Nay
VACANT	NA
Council Member Bill Regner	Aye
Mayor Doug Von Gausig	Aye

Town Attorney Pecharich noted that the Open Meeting Law generally prohibits council from discussing public comment with the exception that council may respond to criticism. As the Town Attorney, Pecharich stated he would respond to the earlier public comment by giving the background of Kramer's decision to resign and possibly decline to take Oath of Office in order to give the public information that they most likely were unaware of. At issue is the fact that 1) there is a vacancy upcoming in the Town Manager's position in July, 2019 and that "a sitting councilmember cannot apply for employment by the Town", 2) the statute says you cannot be considered as a councilmember to be an employee for the town for the period of your entire term of office plus one year. The term of office for this council position is four years starting November 13, 2018 to November 12, 2022 plus one year to November 12, 2023, and 3) there seemed to be no realization of that law by Mr. Kramer or the Town until Attorney Pecharich was asked by the Town to look into it. Pecharich provided further statutory information and historical information.

At audience request, Mayor Von Gausig opened discussion to public comment with the qualification that action had already been taken and would not be reconsidered. The following person addressed the Council in public comment:

Laura Jones, Clarkdale resident – Asked for clarification regarding the timeline of Kramer's possible employment eligibility with the Town. Town Attorney Pecharich advised that Kramer could apply but not be able to be appointed as Town Manager until one year following the end of his term which will be November 12, 2019.

RESOLUTION MAKING APPOINTMENTS TO THE BOARD OF ADJUSTMENT –
Approval of Resolution # 1581 amending Resolution # 1563, making appointments to the Board of Adjustment.

The Board of Adjustment has three vacancies with terms expiring September 30, 2018.

With pending discussions regarding the future oversight of the Board of Adjustment, only incumbents have been recommended for re-appointment. One seat will remain vacant.

The Selection Committee put forward their recommendation that Bob Ingulli and Michael Pierce be re-appointed for the two-year terms on the Board of Adjustment.

Action: Approval of Resolution #1581, amending Resolution #1563, making appointment to the Board of Adjustment.

Motion: Councilmember Regner

Second: Councilmember Buckley

Vote:

Voting Member	Aye/Nay
Council Member Scott Buckley	Aye
Vice Mayor Richard Dehnert	Aye
VACANT	NA
Council Member Bill Regner	Aye
Mayor Doug Von Gausig	Aye

RESOLUTION MAKING APPOINTMENTS TO THE DESIGN REVIEW BOARD–
Approval of Resolution # 1582, amending Resolution # 1554 making appointments to the Design Review Board.

The Design Review Board has two terms expiring September 30, 2018.

The Review Committee put forward their recommendation that Laura Jones (incumbent) and Michael Lindner be appointed for two-year terms on the Design Review Board.

Action: Approval of Resolution #1582, amending Resolution #1554, making appointments to the Design Review Board.

Motion: Vice Mayor Dehnert

Second: Councilmember Buckley

Vote:

Voting Member	Aye/Nay
Council Member Scott Buckley	Aye
Vice Mayor Richard Dehnert	Aye
VACANT	NA
Council Member Bill Regner	Aye

Mayor Doug Von Gausig	Aye
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RESOLUTION MAKING APPOINTMENTS TO THE PARKS AND RECREATION COMMISSION – Approval of Resolution # **1583**, amending Resolution # **1565** making appointments to the Parks and Recreation Commission.

The Parks and Recreation Commission three vacant seats available with terms expiring September 30, 2018.

The panel put forward their recommendation that Lynda Zanolli, Peter Cure, and Gail Worden (incumbents) be appointed for two-year terms on the Parks and Recreation Commission.

Action: Approval of Resolution #1583, amending Resolution #1565, making appointments to the Parks and Recreation Commission.

Motion: Vice Mayor Dehnert

Second: Councilmember Buckley

Vote:

Voting Member	Aye/Nay
Council Member Scott Buckley	Aye
Vice Mayor Richard Dehnert	Aye
VACANT	NA
Council Member Bill Regner	Aye
Mayor Doug Von Gausig	Aye

RESOLUTION MAKING APPOINTMENTS TO THE PLANNING COMMISSION – Approval of Resolution # **1584** amending Resolution # **1556** making appointments to the Planning Commission.

The Planning Commission has two terms expiring September 30, 2018.

The Review Committee put forward their recommendation that Ida-Meri deBlanc and Craig Backus be re-appointed to the Planning Commission for two-year terms.

Action: Approval of Resolution #1584, amending Resolution #1556, making appointments to the Planning Commission.

Motion: Councilmember Regner

Second: Councilmember Buckley

Vote:

Voting Member	Aye/Nay
Council Member Scott Buckley	Aye
Vice Mayor Richard Dehnert	Aye
VACANT	NA
Council Member Bill Regner	Aye
Mayor Doug Von Gausig	Aye

RESOLUTION MAKING AN APPOINTMENT TO THE PUBLIC SAFETY PERSONNEL RETIREMENT BOARD – Approval of Resolution # 1585 amending Resolution # 1557, making an appointment to the Public Safety Personnel Retirement Board.

There was one opening for a Citizen Members of the Public Safety Personnel Retirement Board. The panel has put forward its recommendation that Ray Stock be appointed to the Public Safety Personnel Retirement Board with a term expiring September 30, 2020.

In addition, the secret ballot for the Police Officer Member position of the PSPRS Local Board was held and Officer Mike Brundridge was elected by his peers for the term October 1, 2018 to September 30, 2020.

Action: Approval of Resolution #1585, amending Resolution #1557, making an appointment to the Public Safety Personnel Retirement Board.

Motion: Vice Mayor Dehnert

Second: Councilmember Regner

Vote:

Voting Member	Aye/Nay
Council Member Scott Buckley	Aye
Vice Mayor Richard Dehnert	Aye
VACANT	NA
Council Member Bill Regner	Aye
Mayor Doug Von Gausig	Aye

PRESENTATION FROM EXECUTIVE RECRUITMENT FIRM – The remaining firm who has submitted a proposal for assisting the Town with the 2018-19 recruitment for the Town Manager's position will make a presentation and address questions/comments from the Town Council.

During their June 12, 2018 meeting, the Clarkdale Town Council approved a Restated Employment Agreement with Gayle Mabery to serve as Town Manager through July 1, 2019, after which Mabery intends to retire as the Clarkdale Town Manager.

With the upcoming retirement, the Clarkdale Town Council allocated funds during the FY 2019 budget process to cover costs associated with the recruitment and selection of a new Town Manager. Following the adoption of the budget, staff solicited a number of executive recruitment companies for proposals relating to the upcoming Town Manager search. Clarkdale Town Council Members were asked to individually rate the proposals, and Town Manager Mabery used those ratings to prepare of short-list of firms who would be offered the opportunity to make presentations to the Town Council. Two firms were interviewed at the September 11, 2018 Special Council Meeting. The remaining firm, Slaven Management Consultants, has been re-scheduled and will provide today's final presentation. Council Members were provided a hard copy of the proposal from Slaven at the September 11th meeting.

During the 45 minutes allotted for the presentation, the firm will be given the opportunity to share information about their firm, the Executive Recruitment services that it provides, the firm's

experience with City/Town Manager recruitments, and any other information they wish to provide. The firm will also be available to address comments and questions from the Town Council.

No action from the Council will be taken at this meeting. The Council is expected to further discuss the Town Manager Recruitment process at their October 9, 2018 Council Meeting.

Mr. Paul Wenberg represented Slavin Management Consultants and presented information to council on this agenda item.

Action: This agenda item includes a presentation and discussion only. No formal action is required from the Council at this time.

FUTURE AGENDA ITEMS - Listing of items to be placed on a future council agenda.

ADJOURNMENT: Without objection Mayor Doug Von Gausig adjourned the meeting at 4:14 P.M.

APPROVED:



Doug Von Gausig, Mayor

ATTESTED/SUBMITTED:




Mary Ellen Dunn, Town Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the regular meeting of the Town Council of the Town of Clarkdale, Arizona held on the 25th day of September, 2018. I further certify that meeting was duly called and held and that a quorum was present.

Dated this 13th day of Nov., 2018.

SEAL



Mary Ellen Dunn, Town Clerk